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10/576,070	12/20/2006	Friedrich Boecking	R.306610	4804

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EXAMINER

COLEMAN, KEITH A

ART UNIT	PAPER NUMBER
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3747

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/576,070</p>	<p>Applicant(s) BOECKING, FRIEDRICH</p>	
	<p>Examiner KEITH COLEMAN</p>	<p>Art Unit 3747</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Stephen K. Cronin/
Supervisory Patent Examiner, Art Unit 3747

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's Arguments

First, in Tsumura et al the examiner calls element 22 an "outer piston". However, contrary to the examiner's reading, element 22 of Tsumura et al is integral with and is directly actuated by the stem 38. As shown by Tsumura et al, elements 38 and 22 are integral. They are one and the same element, and form the pump piston which compresses the fuel gas mixture in chamber 24 as actuator 14 pushes them downwardly. Element 22 of Tsumura et al is not actuated by a "second control chamber (20)" as recited in claim 1 at lines 8-9. Piston 22 of Tsumura et al is acted on and is actuated only by its mechanical connection through stem 38. Stem 38 is in turn operated by rocker arm 52 of mechanism 14, plus spring 44. Thus, as mechanism 14 of Tsumura et al is actuated, piston 22 will be operated by its direct mechanical connection to actuator 14, not by means of a control chamber.

Contrary to the examiner's reading of Tsumura et al, element 22 of Tsumura et al is not in any way actuated by chamber 68. The accurate explanation is that piston 22 is forced downwardly by mechanism 14 and stem 38. As this happens, the movement of piston 22 creates or opens chamber 68. As chamber 68 opens it provides a space for the contents of chamber 62 to enter so that pressure in chamber 62 will not build up and force piston 60 to extend into combustion chamber 88 prematurely. In Tsumura et al injection needle 60 is intended to extend into the combustion chamber and thus open the injection openings only when plunger top 74 is engaged by piston 22 at the top of chamber 62. By a direct mechanical engagement as shown in figure 2, piston 22 forces injection needle 60 downwardly to extend its nose 76 into the combustion chamber and thus open spray holes 80. This operation is described by Tsumura et al at column 4 lines 23-30 and column 3 lines 30-51.

Contrary to the examiner's reading as expressed at lines 9-11 of page 3 of the action, "chamber" 26 is not a second control chamber that actuates the outer piston. Tsumura et al clearly disclose the chamber 26 to be an inlet, an area from which fuel enters the compression chamber 24. Neither chamber 24 nor 26 exerts any control over, or in any way actuates, the outer piston. Outer piston 22 of Tsumura et al is controlled exclusively by mechanism 14 through rocker arm 52 and stem 38, which stem 38 is in fact integral with piston 22. In further support of this reading, Tsumura et al shows four unnumbered seals which surround and seal piston 22 and seal it within bore 20. In view of these four seals, chamber 68 is precluded from being hydraulically connected to or actuated by "chamber" 26. Piston 22 is lowered by stem 38, and as this happens chamber 68 opens, thus providing a space for the contents of chamber 62 to enter so that pressure in chamber 62 will not build up and force piston 60 to extend into combustion chamber 88 prematurely.

In Tsumura et al the inner needle part 60 is actuated by direct contact with piston 22 as it is pressed downwardly by stem 38. This is clearly shown in figure 2 and is described in column 4. As outer piston 22 mechanically engages inner needle 60, it pushes against the inner needle 60 so as to make the inner needle 60 move downwardly until nose 76 projects out from nozzle tip 18 and into combustion chamber 88. This opens spray nozzles 82 so that the air/fuel mixture which is created and pressurized by piston 22 within pre-mixing chamber 24 can be sprayed into combustion chamber 88.

In Tsumura et al there is no second booster chamber hydraulically connected to any first control chamber which actuates the inner needle part, contrary to what is recited in claim 1.

And contrary to what the examiner has expressed at lines 12-13 of page 3 of the action, 28 is not a first "control chamber." It is only a "chamber" where air waits to be admitted into pre-mixing chamber 24. Because of the four seals which surround piston 22, "chamber" 28 cannot be hydraulically connected to chamber 62.

Furthermore it is pointed out that in the Tsumura et al reference, the injector belongs to a "pumpe-Duse-Einheit" (unit injector), in which the injection pressure is generated by the unit itself, not by a pressure reservoir (common rail) as in the injector of the present invention. Thus the piston 22 in Tsumura is part of the fuel pump. In fact, piston 22 is the pump piston in Tsumura et al. It is driven by the cam 52 and generates the injection pressure within chamber 24. Consequently the piston 22 cannot be an external needle as well. The injection valve member in Tsumura et al is a one piece valve member, it has only one needle, namely the needle 60.

In his rejections the examiner has combined the Schechter et al reference with the Tsumura et al reference. But there is no structure in Schechter et al which overcomes the fact that the above features are lacking from Tsumura et al. Schechter et al do teach an injection system with an injector at 18, 22. But Schechter et al do not teach any of the structure which, as pointed out above, is not present in Tsumura et al. Schechter et al do not teach a hydraulic booster assembly actuated by the actuator. Schechter et al do not teach first and second control chambers for actuating the valve member. Schechter et al do not teach a first booster chamber hydraulically connected to a second control chamber that actuates the outer needle part. Schechter et al do not teach a second booster chamber hydraulically connected to the first control chamber that actuates the inner needle.

The Tsumura et al and Schechter et al references simply do not meet all the limitations of claim 11 and the claims which depend on it. Furthermore, "outer piston" 22 of Tsumura et al does not open or close an injection valve port. Rather, as it is pushed by stem 38, the outer piston of Tsumura et al closes inlets 26 and 28, and it is a pump piston which then compresses the mixture within chamber 24.

Wording the situation somewhat differently, in Tsumura et al, there is no chamber which can be considered to be a first booster chamber. There is no second control chamber which actuates the outer needle part as recited in claim 11, in Tsumura et al the outer needle part 22 is actuated by the stem 38 and rocker arm 52. Since there is no first booster chamber and no second control chamber in Tsumura et al, there can be no hydraulic connection between them as recited in claim 11.

Likewise in Tsumura et al, there is no chamber which can be considered to be a second booster chamber, and there is no first control chamber which actuates the inner needle part as recited in claim 11, since in Tsumura et al the inner needle part 60 is actuated by

physical engagement of its end 74 with needle 22. Since there is no second booster chamber and no first control chamber in Tsumura et al, there can be no hydraulic connection between them, as is recited in claim 11.

The part which the examiner has looked at in Tsumura et al as the outer needle is part 22. But this part 22 is integral with stem 38, and is actuated there-through by rocker arm 52. Claim 11 recites "a multi-part injection valve member having an inner needle part and an outer needle part". The outer part 22 of Tsumura et al closes off inlets 26 and 28 and so may be considered to be a valve, the injection valve of Tsumura et al is the inner part 60. It is this inner part 60 which controls the injection openings 80. Contrary to what is recited in claim 11, inner part 60, the injection valve, is not a multi-part member having an inner needle part and an outer needle part. Part 22 of Tsumura et al does not cover or uncover any injection openings as required by the language of claim 11 by the fact of the outer part being part of a multi-part injection valve.

Furthermore, the Tsumura et al reference does not disclose a fuel injector whose injection valve member has two needle parts. The sole needle part of the injection valve member of the Tsumura et al reference is element 60. This is the only needle part which acts to open and close injection openings 80. The outer piston 22 acts neither to close, nor to open injection openings, and in this respect is not a needle part of an injection valve.

The outer piston 22 of Tsumura et al, in contrast to being a nozzle needle which opens and closes injection ports, performs the task of sliding down around needle part 60, and in so doing it compresses the mixture in pressure chamber 24 to a point where, as outer part 22 continues downwardly sufficiently, it pushes nozzle needle 60 until reduced diameter section 76 extends through bore 78, at which time the air-fuel mixture compressed in chamber 24 is expelled through the nozzle needle passage 82 and spray holes 80. Outer part 22 is a pressure piston of the fuel pump. It generates the injection pressure by reducing the size of the premixing chamber 24. It is not a needle which opens and closes injection openings.

The Schechter et al reference also does not disclose a fuel injector having two needle parts guided coaxially one inside the other. Thus, the Schechter et al reference cannot be combined with the Tsumura et al reference to provide a valid rejection of the claims, since neither reference teaches the structure which is recited by claim 11 and the claims which depend on it. For this reason, as well as the reasons given above regarding the Tsumura et al reference, the combination of the Tsumura et al and Schechter references does not make a proper combination for the rejection of applicant's claims. This combination of Tsumura et al and Schechter et al simply does not meet all of the limitations of the claims. Benson does not remediate any of the issues presented by the other references and thus adds nothing of substance to the already deficient teachings cited by the examiner in the Tsumura et al and Schechter references.

Examiner's Response to Arguments

With regards to Applicant's first argument (first and second paragraph), actuate is clearly defined as "to put into action; start a process; turn on" or "To put into action or motion; to move or incite to action; [to influence actively]" and Applicant has clearly stated that "As chamber 68 opens it provides a space for the contents of chamber 62 to enter [so that pressure in chamber 62 will not build up and force piston 60 to extend (i.e. to influence actively)] into combustion chamber 88 prematurely." As such, Applicant is reminded to See MPEP 2111. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." Thus, the claim is not limited to such interpretation and the rejection still holds.

With regards to Applicant's second argument (third paragraph), Applicant remarks "Neither chamber 24 nor 26 exerts any control over, or in any way actuates, the outer piston, Outer piston 22 of Tsumura et al is controlled exclusively by mechanism 14 through rocker arm 52 and stem 38, which stem 38 is in fact integral with piston 22. In further support of this reading, Tsumura et al shows four unnumbered seals which surround and seal piston 22 and seal it within bore 20. In view of these four seals, chamber 68 is precluded from being hydraulically connected to or actuated by "chamber" 26. Piston 22 is lowered by stem 38, and as this happens chamber 68 opens, thus providing a space for the contents of chamber 62 to enter so that pressure in chamber 62 will not build up and force piston 60 to extend into combustion chamber 88 prematurely." is clearly at odds with his remarks in the second paragraph that "As chamber 68 opens it provides a space for the contents of chamber 62 to enter [so that pressure in chamber 62 will not build up and force piston 60 to extend (i.e. to influence actively)] into combustion chamber 88 prematurely." and also Applicant has already admitted 24 and 26 are chambers by these remarks, "chamber" 26 is not a second control chamber that actuates the outer piston. Tsumura et al clearly disclose [the chamber 26 to be an inlet, an area from which fuel enters the compression chamber 24]."

With regards to Applicant's third Argument (fourth and fifth paragraph), hydraulic is clearly defined as "operated by, moved by, or employing water or other liquids in motion" or "Of, involving, moved by, or operated by a fluid, especially water, [under pressure]" and Applicant has already stated that "Piston 22 is lowered by stem 38, and as this happens chamber 68 opens, thus providing a space for the contents of chamber 62 to enter so that pressure in chamber 62 will not build up and force piston 60 to extend into combustion chamber 88 prematurely." The patent to Tsumura clearly discloses using different fuel and air pressures as further bolstered by Applicant's remarks. Again, the specificity in Applicant's remarks and specification is not found in the claim language.

Lastly, Applicant's remarks concerning the combinations, especially untenable arguments against limitations regarding a valve, don't overcome the rejections made in the final action. Applicant is reminded to MPEP 2125.

In closing, the specificity in Applicant's remarks and specification (such as what was filed on 4/14/2006) is not found in the claim language. Applicant is reminded to See MPEP 2111. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969) The court explained that "reading a claim in light of the specification, to thereby interpret limitations explicitly recited in the claim, is a quite

different thing from 'reading limitations of the specification into a claim,' to thereby narrow the scope of the claim by implicitly adding disclosed limitations which have no express basis in the claim." Thus, the claim is not limited to such interpretation and the rejection still holds..